IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 559 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MUKESH BABULAL PANDE

Appearance:

MR KP RAVAL, ASSISTANT PUBLIC PROSECUTOR for Petitioner

RULE SERVED for Respondent No. 1

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 18/04/2000

ORAL JUDGEMENT

1. This is a Revision Application under Section 397 and 401 of the Criminal Procedure Code at the instance of the State of Gujarat challenging the order passed by the Special Judge, Surat in Special Case No.62 of 98,

allowing the application of the accused and dropping the charge under Section 3(1)(11) of the Atrocities Act.

2. The accused in Special Case No.62 of 98 was

charged with offences under Section 363, 366 and 376 of the IPC and Section 3(1)(11) of the Atrocities Act. In the said Special Case, the accused gave an application Exhibit 12 and set out two main reasons to support his prayer for dropping the charge under Section 3(1)(11) of the Atrocities Act.

3. The learned Special Judge after hearing the parties and examining the records of the case was pleased to allow the application filed by the accused, and directed that the charge under Section 3(1)(11) of the Atrocities Act be dropped. Hence, the present Revision at the instance of the State.

4. The controversy in the present matter is entirely factual in nature, and does not involve any deeper investigation into legal aspects.

4.1 Section 23(1) of the Atrocities Act reads as under:-

> "23(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act."

4.2 Under the rule making power conferred by the said Section, relevant Rules have been framed to carry out the purpose of the Act.

4.3 Rule 7 of the said Rules reads as under:-

> "7 - Investigating Officer. (1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government, Director-General of Police, Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within

the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government."

A plain reading of Rule 7 and particularly sub-rule (1) thereof indicates two essential requirements. Firstly, the offence alleged to have been committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The second requirement is that the Investigating Officer shall be

appointed by the State Government, Director General of Police or Superintendent of Police .

4.4 The first contention is that the officer who has signed the chargesheet is the Assistant Commissioner of Police, who is not the designated authority contemplated by Rule 7 nor he is an authority appointed by the State Government to carry out the purposes of the Act. It was sought to be contended that the Assistant Commissioner of Police for the City of Surat is equivalent in rank to A Deputy Superintendent of Police. Firstly, this is not established by appropriate evidence on record. However, even if the equivalence of rank is taken for granted or accepted, the question of appointment by the State Government is not established. In this context, learned counsel for the petitioner states that this could have been established by appropriate evidence during the course of the trial, and at the stage of hearing of the application, the prosecution could not be compelled to lead evidence in this regard. This submission of the learned counsel for the petitioner is not justified for the simple reason that the application was being heard on merits before the Special Judge, and if for appropriate defence, in order to contest the application, the State considered it necessary to lead evidence, it could certainly have made the necessary application. The fact remains that no effort was made at all to lead evidence to justify this aspect. However, this is not by itself

the only ground upon which the order has been passed.

4.5 Assuming the fact as given by the petitioner that the Assistant Commissioner of Police was equivalent in rank to the Deputy Superintendent of Police, and also assuming that he was appointed to carry out the purpose of the Act, the factual flaw remains that, on the facts of the case, the Assistant commissioner of Police has not carried out the investigation at all.

4.6 It only requires to be noted that the original offences which were investigated were the offences under the IPC, and were therefore investigated by a Sub-Inspector of Police. It was only thereafter that the Certificate as to Backward Classes/Scheduled Caste was produced, and it became obvious that a charge would lie under the Atrocities Act. It was at least at this stage where the investigation should have been handed over to an authority in conformity with Rule 7. However, it is a common ground and admitted on the record that the Assistant Commissioner of Police has not carried out any investigation at all, and has not even confirmed the statements of different persons (which statements were recorded by the PSI). What the Assistant Commissioner of Police has done in the case is to sign the chargesheet and nothing more.

5. In the premises aforesaid, the learned Special

Judge is eminently justified in holding that the charge under the Atrocities Act was not sustainable, and therefore the said charge be dropped. No doubt, the trial would continue against the accused in respect of the charges under other Sections of the Indian Penal Code.

6. In the premises aforesaid, there is no substance in the present Revision. The same is accordingly dismissed. Rule is discharged. Interim relief stands vacated.

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